IN THE COURT OF APPEALS OF IOWA

No. 4-103 / 93-402

FILED
OCT 25 1994
CLERK SUPREME COURT

IN RE THE MARRIAGE OF JOHN LOUIS DOLEZAL AND JUDITH ANN DOLEZAL

Upon the Petition of
JOHN LOUIS DOLEZAL,

Appellee,

And Concerning
JUDITH ANN DOLEZAL,

Appellant.

Appeal from the Iowa District Court for Linn County, William R. Eads, Judge.

The petitioner appeals the alimony provision of the parties' dissolution decree. **AFFIRMED.**

Karen A. Volz of Ackley, Kopecky & Kingery, Cedar Rapids, for appellant.

John M. Heckel of Holden, Steggal & Heckel, Cedar Rapids, for appellee.

Considered by Donielson, C.J., and Sackett and Huitink, JJ.

DONIELSON, C.J.

John and Judy Dolezal were married on January 19, 1963. Three children were born during the marriage, all of whom were adults at the time of the dissolution proceeding. During the marriage the parties lived on a farm in rural Linn County.

Judy was forty-nine years old at the time of the dissolution hearing. She did not work outside the home during most of the marriage. Judy had a high school education. At the time of trial was employed part-time as a school bus driver for the Solon Community School District, where she earned about $10,546. Her hours were to be reduced during the 1993-94 school year, which would reduce her income to about $6,327. Judy planned to quit her job and enroll as a full-time student at Kirkwood Community College in the fall of 1993. She had been accepted in a program for medical records. Judy testified she could complete the program in two, or possibly three, years.

John was also forty-nine years of age at the time of trial, and was employed as an assembler at Rockwell Goss in Cedar Rapids. He had previously been engaged in farming and had at one time owned a tiling service. At the time of trial, John was earning $17.30 per hour at Rockwell, or $35,900 per year.

John filed a petition for dissolution of marriage in October 1991. In January 1993, the parties entered into a

stipulation concerning all issues of the dissolution except alimony. The stipulation was approved by the district court in the decree of dissolution filed on February 24, 1993. Under the stipulation, the parties agreed to an equal division of assets. Judy sought and received the parties' eighty-acre farm and residence as part of the property distribution. The assets she received are expected to give her income of $766 per month.

Trial was held solely on the issue of alimony. Judy sought permanent alimony of $500 per month. John argued that Judy was not entitled to alimony. The district court awarded Judy rehabilitative alimony of $500 per month during each month she remains in school, but in no event longer than twenty-seven months. The payments may be extended over a three year period if Judy decides not to attend school in the summer, but she will not receive alimony in those months she is not in school. Judy appealed.

Our review of this equitable action is de novo. Iowa R. App. P. 4. We are not bound by the district court's findings of fact, but we do give them deference because the district court had an opportunity to view, firsthand, the demeanor of the witnesses when testifying. In re Marriage of Brown, 487 N.W.2d 331, 332 (Iowa 1992).

Judy contends the award of alimony was inequitable. She asks for alimony of $500 per month until her death or remarriage. She points out that the parties were married

for thirty years and she was almost fifty years old. She states that she has been out of the job market for many years and her earning capacity will always be less than John's. The also asks that the requirement of enrollment as a full-time student as a condition of alimony be eliminated.

Alimony is not an absolute right; an award depends upon the circumstances of each particular case. In re Marriage of Whelchel, 476 N.W.2d 104, 110 (Iowa App. 1991). When determining the appropriateness of alimony, the court should consider the earning capacity of each party. In re Marriage of Oler, 451 N.W.2d 9, 13 (Iowa App. 1989). Also, the ability of the one spouse to pay should be balanced against the needs of the other spouse. Id.

Traditional alimony analysis may be used in long-term marriages where life patterns have largely been set and the earning potential of both spouses can be predicted with some reliability. In re Marriage of Francis, 442 N.W.2d 59, 62-63 (Iowa 1989).

Rehabilitative alimony, on the other hand, was conceived as a way of supporting an economically dependent spouse through a limited period of additional education or retraining following divorce, thereby creating incentive and opportunity for that spouse to become self-supporting. Id. at 63. Because self-sufficiency is the goal of rehabilitative alimony, the duration of such an award may be limited or extended depending on the realistic needs of

the economically dependent spouse, tempered by the goal of facilitating the spouse's economic independence. Id. at 64.

We determine Judy is not entitled to permanent alimony. We first note that Judy is expected to receive $766 per month in income from the assets she received in the dissolution decree. Furthermore, while Judy was economically dependent at the time of the dissolution hearing, the evidence showed Judy should be able to become self-supporting once she finishes her education. Judy's earning potential should increase once she embarks upon her new career. Thus, rehabilitative alimony is appropriate in this case.

We affirm the decision of the district court awarding Judy rehabilitative alimony of $500 per month for twenty-seven months, which is the period she is expected to remain in school.

In his brief, John argues Judy is not entitled to any alimony. John did not file a cross-appeal in this case, and we find he has not preserved this issue for appeal.

We affirm the decision of the district court. Costs of this appeal are assessed to Judy Dolezal.

AFFIRMED.

Huitink, J., concurs; Sackett, J., concurs in part and dissents in part.

SACKETT, J. (concurring in part; dissenting in part)

I concur in part and dissent in part. I would affirm the trial court in all respects except I would increase the duration of the alimony award. After the 27th month of alimony at $500 a month, I would provide for ten additional years of alimony at $200 a month.